

Tiffany Handbags, Inc. and Leather Goods, Plastics, Handbags and Novelty Workers Union, Local 1 affiliated with International Leather Goods, Plastics and Novelty Workers Union, AFL-CIO. Case 2-CA-18754

31 July 1984

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 3 October 1983 the National Labor Relations Board issued an Order directing the Respondent, *inter alia*, to make whole certain of its employees for any losses resulting from the Respondent's unfair labor practices.¹ A controversy having arisen over the amount of backpay owed discriminatees William Villamar, Enrique Battista, Maria Martinez, Juan Cariel, and Alicia Serrano, the Regional Director for Region 2, on 26 January 1984, issued and caused to be served on the parties a backpay specification and notice of hearing alleging the amount of backpay due under the terms of the Board's Order. On 9 March 1984 the Respondent filed an answer generally denying each allegation of the specification.

On 16 April 1984 the General Counsel filed with the Board a Motion to Strike Answer in Part and Motion for Summary Judgment in Part to Backpay Specification. On 23 April 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has not filed a response to the Notice to Show Cause.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment in Part

Section 102.54(b) and (c) of the Board's Rules and Regulations provides as follows:

(b) Contents of the answer to specification.—

The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every

allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to the specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

In its answer to the backpay specification, the Respondent offered a general denial to each of the allegations of the specification. Thus, the Respondent has generally denied the accuracy of the General Counsel's allegations concerning the backpay periods for each discriminatee, the formula used to compute gross backpay, the method of computing net backpay, the computation of gross backpay for each discriminatee, and the failure to make valid reinstatement offers to Villamar and Battista. The General Counsel asserts that information regarding each of these matters is within the Respondent's knowledge, and that the Respondent has failed to state the basis for its disagreement with any of the allegations in the specification. Accordingly, the General Counsel contends that the Respondent's

¹ This Order adopted, in the absence of exceptions, the decision and the Order of an administrative law judge issued in this case 16 August 1983. On 1 November 1983 the Respondent stipulated that it had no objection to any portion of the Board's Order and agreed to comply with its provisions.

general denials do not comply with the requirements of Section 102.54(b), and therefore the allegations of the backpay specification—except as to interim earnings—should be deemed admitted as true and that summary judgment should be granted as to the computation of gross backpay.²

We agree. Inasmuch as the data at issue is within the Respondent's knowledge and control, its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures is contrary to the specificity requirements of Section 102.54(b). Accordingly, we strike the Respondent's answer with respect to paragraphs I, II, IV, V(a), and VI(b) of the backpay specification, and deem such allegations to be admitted as true. Thus, we shall grant the General Counsel's Motion for Summary Judgment in Part as to the amount of gross backpay due discriminatees Villamar, Battista, Martinez, Cariel, and Serrano. We find, however, that the Respondent's general denial is suffi-

cient to place interim earnings into issue for all the discriminatees because that information is generally not within the knowledge of the Respondent.³ Accordingly, we shall order a hearing limited to the determination of the discriminatees' interim earnings, including the availability to discriminatees of interim employment and the discriminatees' failure to seek and/or retain such interim employment.

ORDER

It is ordered that the General Counsel's motion to strike the Respondent's answer in part is granted.

IT IS FURTHER ORDERED that the General Counsel's Motion for Summary Judgment in Part as to gross backpay computations for all the discriminatees is granted.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 2 for the purpose of arranging and giving notice of a hearing before an administrative law judge, at which hearing the issues shall be limited to determining the interim earnings of William Villamar, Enrique Battista, Maria Martinez, Juan Cariel, and Alicia Serrano.

² On 21 March 1984 counsel for the General Counsel informed the Respondent by letter that its answer contained only general denials and that he intended to move for partial summary judgment unless the Respondent submitted an amended answer in proper form (including reasons why it should be considered) by 2 April 1984. No amended answer had been received by the Region as of the date the General Counsel filed his motion, 16 April 1984.

³ *Dews Construction Corp.*, 246 NLRB 945 (1979).